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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 5889 of 2003
Date of Decision : 30.8.2007

Surinder Singh **...Appellant**

Versus

Bhupinder Singh **...Respondent**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Vijay Lath, Advocate for the appellant.

Mr. B.R.Mahajan, Advocate for the respondent.

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RAJESH BINDAL, J.

This is defendant's appeal against the judgment of reversal. The suit filed by the respondent-plaintiff was dismissed by the trial Court, however, the judgment of the trial Court was reversed in appeal by Lower Appellate Court.

Briefly the facts, as noticed in the judgment and decree, are that respondent-plaintiff filed a suit for declaration that he is owner in possession of the property and also for permanent injunction restraining the appellant from selling, mortgaging, alienating, transferring and disposing of the same in any manner whatsoever. It was claimed in the suit that property was originally owned by one Banta Singh, who had sold the same, vide sale deed dated April 21, 1937, to the father of the respondent-plaintiff, namely, Shri Pritam Singh, who died in 1950. The predecessor-in-interest of the respondent-plaintiff were owners in possession of the property ever since then. After the death of his father, the respondent-plaintiff requested for change of ownership in his name, mutation though was entered but not attested by the Assistant Collector. However, thereafter respondent-plaintiff is being shown in the revenue record as 'Billa Lagan Tasaber Bai'. Still further the plea raised by the respondent-plaintiff was

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that the property in question was being let out to different tenants ever since it was purchased by the predecessor-in-interest of the respondent-plaintiff and in the year 1959, the same was let out to Karam Chand brother of Ram Asra (defendant in suit) vide agreement Ex. P-1. In defence, the appellant relied upon another sale deed dated July 23, 1990 executed by Iqbal Singh, one of the sons of Banta Singh, the original owner of the land, who had earlier sold the land in question vide sale deed dated April 21, 1937 to the father of the respondent-plaintiff.

On appreciation of the evidence on record, learned trial Court came to the conclusion that the original sale deed of April 21, 1937, executed by Banta Singh in favour of father of the plaintiff having not been produced in evidence, respondent-plaintiff cannot be declared to be owner of the property and the declaration as well as injunction prayed for by him was accordingly declined. However, lower Appellate Court, considering the totality of the circumstances and weighing the other evidence also on record to the effect that in other proceedings, the claim made by the appellant-defendant claiming ownership vide sale deed dated July 23, 1990 was disbelieved and still further ejectment application filed by the respondent-plaintiff against Karam Chand and Ram Asra was allowed by the Lower Appellate Court holding them to be the tenants of the property, accepted the appeal and decreed the suit filed by the respondent/plaintiff.

I have heard learned counsel for the parties and with their assistance have perused the judgments of both the Courts below.

Reiterating his submissions, learned counsel for the appellant submitted that reliance of the Lower Appellate Court on the earlier litigation between the parties to hold that respondent-plaintiff was held to be owner of the property in dispute on the basis of sale deed dated April 21, 1937 is totally misconceived as no such finding was recorded therein. He submitted that in the earlier suit filed by the appellant only claim made by them that they are owner of the property in dispute on the basis of sale deed dated July 23, 1990 executed in their favour by Iqbal Singh, was rejected. He submitted that in the absence of the sale deed dated April 21, 1937, on record merely the revenue entries or entries in the municipal record showing

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the payment of taxes etc. by the respondent-plaintiff cannot be relied upon to hold that he is owner of the property in dispute. Still further, he submitted that in the suit filed by the respondent-plaintiff in para 3 of the plaint, alternative plea of adverse possession was also taken, which necessarily meant that even the respondent-plaintiff admitted that some one else was the owner of the property. Summing up the arguments, the prayer made was that judgment and the decree of the Lower Appellate court reversing that of the trial Court is perverse and accordingly, deserves to be set aside.

On the other hand, learned counsel appearing for the respondent-plaintiff submitted that ever since the property was purchased by the father of the respondent-plaintiff the same was being let out. In the mutation record Ex. P7 and Ex. P8, it is specifically mentioned that the same was being claimed on the basis of sale deed dated April 21, 1937, which according to him was misplaced in the office. He further relied upon document Ex. P1 vide which on June 14, 1959, the property in question was let out to Karam Chand brother of Ram Asra. Further reliance is on the fact that defence, which was set up by the appellant to dislodge claim made by the respondent-plaintiff claiming them to be owner of the property on the basis of sale deed dated July 23, 1990, is totally misconceived as suit filed by appellant basing their claim of ownership on that sale deed was dismissed, which judgment attained finality. Still further it is argued that ejectment application filed by the respondent-plaintiff against the appellant was also accepted though revision against that is pending before this Court. Relying upon entry made in the revenue record where the respondent-plaintiff is shown to be 'Billa Lagan Tasaber Bai', he submitted that in the Jamabandi for the year 1951-52 Ex. P9, the property was shown in possession of the respondent-plaintiff as 'Gairmumkin Malkan' and in the column of Lagan, entry which was mentioned as 'Billa Lagan Tasaber Bai', which entry continued thereafter. Sum total of his contention is that merely because the respondent-plaintiff was not able to produce the sale deed, which was a document executed in 1937, he could not be non suited when there was other ample evidence on record to show the ownership of the

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respondent-plaintiff of the suit property. No one else had come forward to claim the ownership ever since it was purchased by father of the respondent-plaintiff in 1937. The same was being let out and even to the appellant it was let out. Accordingly, the prayer made was that the appeal filed by the appellant-defendant is misconceived and deserves to be dismissed at motion stage.

Having heard learned counsel for the parties, I find weight in the contention raised by learned counsel for the respondent-plaintiff.

The sale deed dated April 21, 1937 executed by Banta Singh in favour of father of the respondent-plaintiff may not have been produced on the record, however, it finds mentioned in the mutation record. Still further, the name of the respondent-plaintiff is mentioned in the revenue record from 1950-51 onwards. There being evidence in the form of entries in the municipal committee, which though independently may not be sufficient to hold a person to be owner of the property but certainly have some corroborative value if read in conjunction with other evidence. The defence put by the appellant regarding the sale of the property in question in his favour by the son of the original owner vide sale deed dated July 23, 1990 having been found to be misconceived by the Civil Court as in that suit even the alleged sale deed was also not produced and the letting out of the property in question by the respondent-plaintiff way back on June 14, 1959 to Karam Chand brother of Ram Asra, the predecessor-in-interest of the appellant certainly go to prove that the respondent-plaintiff is owner of the property and accordingly, while appreciating the entire evidence on record in totality, in my opinion, learned Lower Appellate Court has come to a right conclusion granting the relief prayed for by the respondent-plaintiff in the suit filed.

Accordingly, while concurring with the reasoning recorded by the Lower Appellate Court, I do not find any merit in the present appeal and the same is dismissed.

August 30, 2007 **(Rajesh Bindal)**
Pka **Judge**